

HOUSE BILL 1210  
By DuBois

AN ACT to amend Tennessee Code Annotated, Title 5; Title 6; Title 7; Title 9; Title 11; Title 64; Title 65 and Title 69.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The general assembly recognizes the need to examine pertinent policy proposals to facilitate a proactive approach to rail-to-trails planning in Tennessee.

SECTION 2. Railroad Corridor Preservation Policy.

It shall be the policy of the state to actively plan for and pursue preservation of abandoned railroad corridors. Using an interagency task force, an early warning process shall be established to prevent loss of prioritized corridors.

SECTION 3. Rail-to-Trail Development Policy.

The department of transportation shall consider reuse and redevelopment of these corridors for bicycling and walking or other public use. It shall be recognized that rail-to-trails can form the core of a statewide regional trail and greenway system that serves both non-motorized transportation and recreation needs.

SECTION 4. Corridor Assessment.

Within one (1) year of enactment of this plan, the department of transportation shall conduct a comprehensive assessment of active, inactive and abandoned railroad corridors in order to identify potential corridors for preservation through railbanking and rail-trail conversion.

For those corridors where rail use is current, the development of rail-with-trail shall be considered.

#### SECTION 5. Flexible Funding.

(a) When determining how to fund a rail-to-trail project, the department of transportation shall urge transportation planners and decision makers to consider all eligible TEA-21 funding categories.

(b) The state shall, with respect to trail and bicycle/pedestrian bridge design, establish design standards, contracting procedures and engineering specifications that allow for procurement of "design-build" structures and promote efficient expenditure of TEA-21 funds while ensuring high quality projects.

#### SECTION 6.

As used in this section, unless the context clearly requires otherwise:

(1) "Department" means the Tennessee department of transportation.

(2) "Municipality" means any incorporated municipality.

(3) "System diagram map" means the map required under federal law to be filed with the department by the railroad operating in this state that indicates rail lines in the process of abandonment, rail lines the railroad expects to abandon and the rail lines that are under study by the railroad for possible abandonment in the future.

#### SECTION 7.

(a) The department of transportation shall have the first right to acquire, for present or future transportation or recreational purposes, any property used in operating a railroad or railway, including land and rails, ties, switches, trestles, bridges and the like located thereon, which has been abandoned. The department may, in connection with abandoned rail property, assign this right to the department, any county or municipality or any transit authority.

(b) Acquisition by the department may be by gift, purchase or condemnation.

The department may lease and collect rents and fees for any use of rail property pending discharge of the department's duty to convey property that is not necessary for a public purpose.

(c) No person owning abandoned rail property, including any person to whom ownership reverts upon abandonment, may convey or dispose of any abandoned rail property without first obtaining a written release from the department indicating that the first right of acquisition under this section will not be exercised or assigned.

(d) No railroad or railway may convey any rail property prior to abandonment if the rail property is part of a rail line shown on the railroad's system map as in the process of abandonment, expected to be abandoned or under study for possible abandonment unless the conveyance or disposal is for the purpose of providing continued rail service under another company or agency.

(e) Any conveyance made without obtaining such release is void. The first right of acquisition of the department under this section does not apply to any rail property declared by the department to be abandoned before the effective date of this act. The department may acquire any abandoned rail property under this section regardless of the date of its abandonment.

SECTION 8. The first right of acquisition under section 7 of this act applies only to the following property:

(1) In unincorporated areas, any land measured fifty feet (50') from the centerline of each outermost track bed and any land between such tracks.

(2) In incorporated areas, any land measured thirty-three feet (33') from the centerline of each outermost track bed and any land between such tracks.

(3) Any property not included in subdivisions (1) and (2) that consists of a loading or unloading facility, a vehicular access facility or a building that is, in the department's judgment, suitable for a freight or rail passenger station.

#### SECTION 9.

For purposes of this section, rail property shall be deemed abandoned if subdivision (1) or (2) applies:

(1) A certificate or approval of abandonment has been issued by the interstate commerce commission or federal court or any other federal or state agency having jurisdiction over the rail property.

(2) A certificate or approval of abandonment is not required and the use of the rail property for railroad or railway purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances including, but not limited to, the following:

(A) If the rail property is not used for railroad purposes for two (2) consecutive years.

(B) If the facilities on the rail property are removed or rendered unfit for service.

(C) If the rail property is used for other than railroad purposes.

#### SECTION 10.

Upon its own initiative, the department may determine at any time whether the rail property is abandoned, and whether it is in the best interest of the state to acquire the rail property. Within ninety (90) days after being requested by any state agency, any railroad or any county or municipality in which the rail property is located, the department shall make a determination of the abandonment status and, if found to be abandoned, shall determine whether it is in the best interest of the public to acquire the rail property. If it is determined to acquire the rail property or any part or interest therein, the department shall, within one hundred

eighty (180) days of the determination of its abandoned status, or the interstate commerce commission's final order permitting the abandonment, or the termination of any efforts to negotiate an agreement for continual operation of rail service on the line, whichever occurs last, determine the fair market value of the rail property and acquire the rail property at a price deemed reasonable by the department or make a relocation order as provided by law. In making its determination, the department shall consider long-range potential for use of the rail property for restoration of railroad service and for other transportation-related purposes. The department shall solicit the opinions of appropriate state agencies, affected counties and municipalities and other interested persons. The department shall give due consideration to an expressed desire by a state agency or an affected county or municipality to acquire, in whole or in part, the rail property under consideration. Subject to the provisions of this act, all or part of any interest in abandoned rail property acquired by the department under this section may be subsequently conveyed to another state agency or a county or municipality for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or to a railroad for continued railroad transportation operations when the railroad has operated on the rail property for five (5) years and the department may make such conveyances for such purposes. Any determination of the department under this section that rail property is not abandoned shall not preclude the undertaking of a subsequent investigation and determination concerning the same rail property or any portion thereof. If at any time subsequent to the acquisition of rail property under this section the department determines that the rail property is not suitable for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or that the rail property or any interest therein may be conveyed to any other person on terms which are not inconsistent with the potential use of the rail property for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution or which yield a benefit, including financial benefits, to the state which outweighs the benefit derived from the rail

property if used for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, the department may convey the rail property or such interest therein. The department shall give notice of its intention to make the conveyance, and state and local units of government shall have the first six (6) months in which to exercise their opportunity to acquire the rail property or interest therein. The railroad from which the rail property was acquired shall have the next six (6) months in which to exercise its opportunity to reacquire the rail property or interest therein.

#### SECTION 11.

The department shall sell at public or private sale rail property acquired pursuant to this act when the department determines that the rail property is not necessary for a public purpose and, if real property, the real property is not the subject of a petition in a pending matter. Upon receipt of the full purchase price, the department shall, by appropriate deed or other instrument, transfer the rail property to the purchaser. The funds derived from sales under this subsection shall be deposited in the transportation fund, and the expense incurred by the department in connection with the sale shall be paid from the existing departmental funding.

#### SECTION 12.

(a) Any railroad which places a rail line or portion of a line on a system diagram map shall within sixty (60) days of such action provide to the department one (1) legible copy of each map in the railroad's possession which shows rail property boundaries or engineering stations for the line involved. At the same time, the railroad shall provide to the department all other pertinent information in its possession requested by the department relating to the title to the rail property covered by the line involved. The department shall determine the reasonable cost to the railroad of providing documents and information under this subsection and shall reimburse the railroad in this amount. Any conveyance by the railroad made without providing the information required by this subsection is void.

(b) Any state agency, railroad, county or municipality which requests the department to make a determination of abandonment status and public interest in acquisition of rail property shall provide a formal legal description of the rail property that is the subject of the request. The department may decline to take action on requests that do not contain an adequate description of the rail property involved. When the department provides a release of its first right to acquire rail property, the state agency, railroad, county or municipality which receives the release shall within ninety (90) days have the release recorded by the register of deeds for each county in which the rail property is located.

#### SECTION 13.

To the extent that the first or subsequent rights of acquisition under this section conflict with rights conferred by 49 U.S.C. 10905(f)(4) or 10910(h), the rights conferred by this section are subordinate to such federal rights and shall take effect only when consistent with 49 U.S.C. 10905(f)(4) and 10910(h).

#### SECTION 14.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled at Tennessee Code Annotated, Title 4, Chapter 5.

#### SECTION 15.

A rail-trail development office is hereby created within the department of environment and conservation. The department shall ensure that the office has the necessary expertise to carry out the requirements imposed upon it by this section. Among other rail-trail functions and duties that may be assigned to it, the office shall carry on at least the following responsibilities:

(1) The office shall monitor the proceedings of the United States department of transportation's surface transportation board and shall disseminate to interested entities

in Tennessee information regarding those proceedings of interest to rail-trail conversion or policy in the state. If a railroad applies to the department of transportation for authority to discontinue service over or to abandon a railroad corridor in the state, the office shall immediately notify those political subdivisions through which the corridor passes and any interested state agency of the proceedings and the potential for trail development of the corridor. Notice shall also be sent to the county executive of each county through which the proposed abandonment passes, who shall distribute copies of the notice to each member of the chief legislative body of the county at the next regularly scheduled meeting of that legislative body. The office shall also send a copy of the notice to each soil and water conservation district through which the abandonment passes. If time is of the essence and it appears that the corridor is a suitable candidate for conversion to a rail-trail and that no other rail-trail-interested entity will be participating in the federal proceeding, the office shall take those steps necessary to cause a railbanking or public use condition to be imposed in the federal proceeding;

(2) The office shall assist any requesting political subdivision or agency of state government with assistance on any application to the department regarding an abandoned or about-to-be-abandoned railroad corridor, including any requests for railbanking or imposition of public use conditions;

(3) The office shall coordinate and promote rail-trail development efforts among the various agencies of state government. While this subdivision does not confer upon the office any powers beyond those that it may ordinarily possess, every entity of state government shall cooperate with the office to the extent practicable under the circumstances;

(4) The office shall furnish to requesting political subdivisions assistance in applying to available federal, state or local funding sources for funds to be used for the process of converting railroad corridors into public use trails; and



(5) The office may apply for federal, state or private grants or other forms of financial assistance to carry on its mission.

SECTION 16. The provisions of this act shall be implemented out of existing funds. The provisions of this act shall not be construed to be an appropriation of funds, and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the General Appropriations Act.

SECTION 17. This act shall take effect July 1, 2003, the public welfare requiring it.